

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STAN'S BAR-B-Q LLC, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE CHARTER OAK FIRE INSURANCE
CO.,

Defendant.

No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

I. INTRODUCTION

Plaintiff, STAN'S BAR-B-Q LLC ("Stan's" or "Plaintiff"), individually and on behalf of all other similarly situated members of the defined national class (the "Class Members"), by and through the undersigned attorneys, brings this class action against The Charter Oak Fire Insurance Company ("Charter Oak" or "Defendant") and alleges as follows based on personal knowledge and information and belief:

II. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship

1 from Defendant, there are 100 or more Class members nationwide, and the aggregate amount in
2 controversy exceeds \$5,000,000. The Court has supplemental jurisdiction over Plaintiffs' state
3 law claims under 28 U.S.C. § 1367.

4 2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the
5 Court has personal jurisdiction over Defendant, a substantial portion of the alleged wrongdoing
6 occurred in this District and the state of Washington, and Defendant has sufficient contacts with
7 this District and the state of Washington.
8

9 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
10 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at
11 issue in this Complaint arose in this District. Plaintiff's place of business is located in Issaquah,
12 WA, King County. This action is therefore appropriately filed in the Seattle Division because a
13 substantial portion of the events giving rise to this lawsuit arose in King County.
14

15 **III. PARTIES**

16 4. Plaintiff Stan's Bar-B-Q LLC owns and operates a small barbecue restaurant and
17 catering business located at 58 Front Street North, Issaquah, WA 98027.

18 5. Defendant The Charter Oak Fire Insurance Co. is an insurance carrier
19 incorporated and domiciled in the State of Connecticut with its principal place of business in
20 Connecticut.
21

22 **IV. NATURE OF THE CASE**

23 6. Due to COVID-19 and a state-ordered cessation of its regular business
24 operations, Plaintiff cannot fully operate its restaurant and catering business. Plaintiff intended
25 to rely on his business insurance to maintain his business as a going concern. This lawsuit is
26

1 filed to ensure that Plaintiff and other similarly-situated policyholders receive the insurance
2 benefits to which they are entitled and for which they paid.

3 7. Defendant issued one or more insurance policies to Plaintiff, including
4 Businessowners Property Coverage and related endorsements, insuring Plaintiff's property and
5 restaurant business and other coverages, with effective dates of August 29, 2019 to August 29,
6 2020.

7 8. Plaintiff's business property includes property leased by Plaintiff and used for
8 general restaurant and related business purposes.

9 9. Charter Oak's Businessowners Property Coverage provides Plaintiff with
10 Business Income Coverage, Extra Expense Coverage, Extended Business Income Coverage, and
11 Civil Authority Coverage.

12 10. Plaintiff paid all premiums for the coverage when due.

13 11. On or about January 20, 2020, the United States of America saw its first cases of
14 person infected by COVID-19, which has been designated as a worldwide pandemic.

15 12. In light of this pandemic, Washington Governor Jay Inslee issued certain
16 proclamations and orders affecting many persons and businesses in Washington, whether
17 infected with COVID-19 or not, requiring certain public health precautions. Among other
18 things, Governor Inslee's "Stay Home, Stay Healthy" order required the closure of all non-
19 essential businesses, including significant aspects of Plaintiff's business.

20 13. Plaintiff's property sustained direct physical loss and/or damages related to
21 COVID19 and/or the proclamations and orders.

1 14. Plaintiff's property will continue to sustain direct physical loss or damage
2 covered by the Charter Oak policy or policies, including but not limited to business interruption,
3 extra expense, interruption by civil authority, and other expenses.

4 15. Plaintiff's property cannot be used, or used fully, for its intended purposes.

5 16. As a result, Plaintiff has experienced and will experience loss covered by the
6 Charter Oak policy or policies.

7 17. Plaintiff has initiated its submission of a claim for loss with Charter Oak.
8 Although Plaintiff has not completed the submission of its claim as of the date of this filing,
9 Plaintiff was informed orally on or about March 18, 2020, and again on April 20, 2020, by its
10 insurance broker, on behalf of Charter Oak, that its claim for coverage will be denied by Charter
11 Oak.
12

13 V. CLASS ACTION ALLEGATIONS

14 18. This matter is brought by Stan's on behalf of itself and those entities similarly
15 situated, under Federal Rule of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3).

16 19. The Classes that Plaintiff seeks to represent are defined at this time as:

17 A. ***Business Income Breach of Contract Class:*** All persons and entities in
18 the United States insured under a Charter Oak policy with Business Income coverage
19 who suffered a suspension or reduction of their business at the covered premises related
20 to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other
21 civil authorities and whose Business Income claim was denied by Charter Oak.
22

23 B. ***Business Income Declaratory Relief Class:*** All persons and entities in
24 the United States insured under a Charter Oak policy with Business Income Coverage
25 who suffered a suspension or reduction of their business at the covered premises related
26

to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

C. ***Extra Expense Breach of Contract Class:*** All persons and entities in the United States insured under a Charter Oak policy with Extra Expense Coverage who incurred expenses while seeking to minimize the suspension of business at the covered premises in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Extra Expense claim was denied by Charter Oak.

D. ***Extra Expense Declaratory Relief Class:*** All persons and entities in the United States insured under a Charter Oak policy with Extra Expense Coverage who incurred expenses while seeking to minimize the suspension of business at the covered premises in connection with COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

E. ***Extended Business Income Breach of Contract Class:*** All persons and entities in the United States under a Charter Oak policy with Extended Business Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities and whose Extended Business Coverage claim was denied by Charter Oak.

F. ***Extended Business Income Declaratory Relief Class:*** All persons and entities in the United States under a Charter Oak policy with Extended Business Coverage who suffered a suspension of their business at the covered premises related to COVID-19 and/or orders issued by Governor Inslee, other Governors, and/or other civil authorities.

1 G. **Civil Authority Breach of Contract Class:** All persons and entities in the
2 United States insured under a Charter Oak policy with Civil Authority Coverage who
3 suffered a loss of business income and/or extra expense related to the impact of COVID-
4 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
5 authorities and whose civil authority claim was denied by Charter Oak.

6 H. **Civil Authority Declaratory Relief Class:** All persons and entities in the
7 United States insured under a Charter Oak policy with Civil Authority coverage who
8 suffered a loss of business income and/or extra expense related to the impact of COVID-
9 19 and/or orders issued by Governor Inslee, other Governors, and/or other civil
10 authorities.

11 20. Excluded from the Class are Defendant's officers, directors, and employees; the
12 judicial officers and associated court staff assigned to this case; and the immediate family
13 members of such officers and staff. Plaintiff reserves the right to amend the Class definition
14 based on information obtained in discovery.

15 21. This action may properly be maintained on behalf of each proposed Class under
16 the criteria of Rule 23 of the Federal Rules of Civil Procedure.

17 22. **Numerosity:** The members of the Class are so numerous that joinder of all
18 members would be impractical. Plaintiff is informed and believes that the proposed Class
19 contains thousands of members. The precise number of class members can be ascertained
20 through discovery, which will include Defendant's records of policyholders.

21 23. **Commonality and Predominance:** Common questions of law and fact
22 predominate over any questions affecting only individual members of the Class. Common
23 questions include, but are not limited to, the following:
24
25
26

1 A. Whether the class members suffered covered losses based on common
2 policies issued to members of the Class;

3 B. Whether Charter Oak acted in a manner common to the class and
4 wrongfully denied claims for coverage related to COVID-19 and/or orders issued by
5 Governor Inslee, other Governors, and/or other civil authorities;

6 C. Whether Business Income coverage in Charter Oak's policies of
7 insurance applies to a suspension of business related to COVID-19 and/or orders issued
8 by Governor Inslee, other Governors, and/or other civil authorities;

9 D. Whether Charter Oak's Extra Expense coverage applies to efforts to
10 minimize a loss related to COVID-19 and/or orders issued by Governor Inslee, other
11 Governors, and/or other civil authorities;

12 E. Whether Charter Oak's Civil Authority Coverage applies to a suspension
13 of business relating to the impact of COVID-19 and/or orders issued by Governor Inslee,
14 other Governors, and/or other civil authorities;

15 F. Whether Charter Oak has breached its contracts of insurance through a
16 blanket denial of all claims based on business interruption, business income loss or full
17 or partial closures related to COVID-19 and/or orders issued by Governor Inslee, other
18 Governors, and/or other civil authorities.

19 G. Whether, because of Charter Oak's conduct, Plaintiff and the class
20 members have suffered damages; and if so, the appropriate amount thereof; and

21 H. Whether, because of Charter Oak's conduct, Plaintiff and the class
22 members are entitled to equitable and declaratory relief, and if so, the nature of such
23 relief.
24
25
26

1 24. **Typicality:** Stan's claims are typical of the claims of the members of the classes.
2 Stan's and all the members of the classes have been injured by the same wrongful practices of
3 Defendant. Stan's claims arise from the same practices and course of conduct that give rise to
4 the claims of the members of the Class and are based on the same legal theories.

5 25. **Adequacy:** Stan's will fully and adequately assert and protect the interests of the
6 classes and has retained class counsel who are experienced and qualified in prosecuting class
7 actions. Neither Stan's nor its attorneys have any interests contrary to or in conflict with the
8 Classes.
9

10 26. **Federal Rule of Civil Procedure 23(b)(1), the Risk of Inconsistent or**
11 **Varying Adjudications and Impairment to Other Class Members' Interests:** Plaintiff seeks
12 adjudication as to the interpretation, and resultant scope, of Defendant's policies, which are
13 common to all members of the class. The prosecution of separate actions by individual members
14 of the classes would risk inconsistent or varying interpretations of those policy terms and create
15 inconsistent standards of conduct for Defendant. The policy interpretations sought be Plaintiff
16 could also impair the ability of absent class members to protect their interests.
17

18 27. **Federal Rule of Civil Procedure 23(b)(2), Declaratory and Injunctive Relief:**
19 Defendant acted or refused to act on grounds generally applicable to Plaintiff and other
20 members of the proposed classes making injunctive relief and declaratory relief appropriate on a
21 classwide basis.
22

23 28. **Federal Rule of Civil Procedure 23(b)(3), Superiority:** A class action is
24 superior to all other available methods of the fair and efficient adjudication of this lawsuit.
25 While the aggregate damages sustained by the classes are likely to be in the millions of dollars,
26 the individual damages incurred by each class member may be too small to warrant the expense

1 of individual suits. Individual litigation creates a risk of inconsistent and/or contradictory
2 decisions and the court system would be unduly burdened by individual litigation of such cases.
3 A class action would result in a unified adjudication, with the benefits of economies of scale and
4 supervision by a single court.

5 **VI. CAUSES OF ACTION**

6 **COUNT ONE — DECLARATORY JUDGMENT**

7 *(Claim brought on behalf of the Business Income Coverage Declaratory Relief Class,*
8 *Extra Expense Declaratory Relief Class, Extended Business Income Declaratory Relief Class,*
9 *and Civil Authority Declaratory Relief Class)*

10
11 29. All previous paragraphs alleged above are incorporated herein.

12 30. This is a cause of action for declaratory judgment pursuant to the Declaratory
13 Judgment Act, codified at 28 U.S.C. § 2201.

14 31. Stan's brings this cause of action on behalf of the Business Income Coverage
15 Declaratory Relief Class, Extra Expense Declaratory Relief Class, Extended Business Income
16 Declaratory Relief Class, and the Civil Authority Declaratory Relief Class.

17
18 32. Stan's seeks a declaratory judgment declaring that Plaintiff's and class members'
19 losses and expenses resulting from the interruption of their businesses are covered by the Policy.

20 33. Stan's seeks a declaratory judgment declaring that Charter Oak is responsible for
21 timely and fully paying all such losses.

22 **COUNT TWO — BREACH OF CONTRACT**

23 *(Claim brought on behalf of the Business Income Coverage Breach of Contract Class,*
24 *Extra Expense Breach of Contract Class, Extended Business Income Breach of*
25 *Contract Class, and Civil Authority Breach of Contract Class)*
26

1 34. All previous paragraphs alleged above are incorporated herein.

2 35. The Policy is a contract under which Plaintiff and the members of the class paid
3 premiums to Defendant in exchange for Charter Oak's promise to pay Stan's and members of
4 the class for all claims covered by the Policy.

5 36. Stan's has paid its insurance premiums.

6 37. On information and belief, Stan's has initiated, and will soon complete, its filing
7 of a claim for its loss covered by the Policy. Upon information and belief, Charter Oak has
8 stated it will deny Stan's claim, Charter Oak intends to deny Stan's claim, and Charter Oak has
9 denied coverage for other similarly situated policyholders.
10

11 38. Denying coverage for the claim is a breach of the insurance contract.

12 39. Stan's is harmed by the breach of the insurance contract by Defendant.

13 **VII. PRAYER FOR RELIEF**

14 40. A declaratory judgment that the policy or policies cover Plaintiff's losses and
15 expenses resulting from the interruption of Plaintiff's business by COVID-19 and/or orders
16 issued by Governor Inslee, other Governors, and/or other civil authorities.
17

18 41. A declaratory judgment that Defendant is responsible for timely and fully paying
19 all such losses.

20 42. Damages.

21 43. Pre- and post-judgment interest at the highest allowable rate.

22 44. Reasonable attorneys' fees and costs.

23 45. Such further and other relief as the Court shall deem appropriate.
24

25 **VIII. JURY TRIAL DEMANDED**

26 Plaintiff demands a jury trial on all claims so triable.

DATED this 22nd day of April, 2020.

KELLER ROHRBACK L.L.P.

By: s/ Amy Williams-Derry

By: s/ Ian S. Birk

By: s/ Lynn L. Sarko

By: s/ Gretchen Freeman Cappio

By: s/ Irene M. Hecht

By: s/ Maureen Falecki

Amy Williams-Derry, WSBA #28711

Ian S. Birk, WSBA #31431

Lynn L. Sarko, WSBA #16569

Gretchen Freeman Cappio, WSBA #29576

Irene M. Hecht, WSBA #11063

Maureen Falecki, WSBA #18569

1201 Third Avenue, Suite 3200

Seattle, WA 98101

Telephone: (206) 623-1900

Fax: (206) 623-3384

Email: awilliams-derry@kellerrohrback.com

Email: ibirk@kellerrohrback.com

Email: lsarko@kellerrohrback.com

Email: gcappio@kellerrohrback.com

Email: ihecht@kellerrohrback.com

Email: mfalecki@kellerrohrback.com

By: s/ Alison Chase

Alison Chase, *pro hac vice forthcoming*

801 Garden Street, Suite 301

Santa Barbara, CA 93101

Telephone: (805) 456-1496

Fax: (805) 456-1497

Email: achase@kellerrohrback.com

***Attorneys for Plaintiff and the Proposed
Classes***

4824-3892-5754, v. 1